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13 NXP B.V.

14
15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17
18 NXP B.V.,

19 Plaintiff,

20 v.

21 NINTENDO CO. LTD.,

NINTENDO OF AMERICA, INC.

22 Defendants.

CASE NO.

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY DEMAND

1 Plaintiff NXP B.V. (“NXP”) for its complaint against Defendants Nintendo Co. Ltd.
2 (“Nintendo Japan”) and Nintendo of America Inc. (“Nintendo USA”) (collectively “Nintendo”) on
3 personal knowledge as to its own actions and on information and belief as to all others based on its
4 investigation, hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. This is an action for patent infringement arising under the Patent Laws of the
7 United States, 35 U.S.C. §§ 100, *et seq.* This Court has subject matter jurisdiction over this action
8 under 28 U.S.C. §§ 1331, 1332 and 1338(a).

9 2. This Court has personal jurisdiction over Nintendo. Nintendo manufactures
10 (directly or indirectly through third party manufacturers) and/or assembles products that are and
11 have been used, offered for sale, sold, and purchased in the District of Nevada. Nintendo also,
12 directly and/or through its distribution network, places electronic products within the stream of
13 commerce, which stream is directed at the District of Nevada, with the knowledge and/or
14 understanding that such products will be sold in this District. Nintendo has purposefully availed
15 itself of the privilege of conducting business activities within the State of Nevada and this
16 District, which activities, upon information and belief, infringe one or more claims of the United
17 States patents owned by NXP, causing injury in the State of Nevada and this District.

18 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and
19 1400(b). Plaintiff believes and based thereon, allege, that Nintendo resides in this judicial district
20 within the meaning of 28 U.S.C. § 1391(c), and further, that Nintendo has committed, contributed
21 to, and/or induced acts of patent infringement in this judicial district and provides goods or
22 services and does business in this judicial district.

23 4. Some of Nintendo’s recent Nevada activities include the following. Nintendo
24 showcased and promoted the Nintendo Wii U in Las Vegas, Nevada. Upon information and
25 belief, at the International Consumer Electronics Show (“CES”) 2012 event held in Las Vegas,
26 Nevada on January 8-13, 2012, Nintendo advertised, demonstrated, used, offered to sell, and/or
27 sold its Wii U product. Upon information and belief, several Nintendo executives and employees
28

11. United States Patent No. 7,570,716 (“the ’716 patent”), titled *Data Carrier Provided With At Least Two Decoding Stages*, was duly and lawfully issued August 4, 2009. NXP is the sole owner of all rights, title and interest in the ’716 patent. A true and correct copy of the ’716 patent is attached as Exhibit 2.

12. United States Patent No. 8,203,432 (“the ’432 patent”), titled *Method Of Reading A Plurality Of Non-Contact Data Carriers, Including An Anti-Collision Scheme*, was duly and lawfully issued June 19, 2012. NXP is the sole owner of all rights, title and interest in the ’432 patent. A true and correct copy of the ’432 patent is attached as Exhibit 3.

13. United States Patent No. 8,150,316 (“the ’316 patent”), titled *Communication Partner Appliance With Automatic Send Mode Activation*, was duly and lawfully issued April 3, 2012. NXP is the sole owner of all rights, title and interest in the ’316 patent. A true and correct copy of the ’316 patent is attached as Exhibit 4.

14. United States Patent No. 8,249,503 (“the ’503 patent”), titled *Communication Partner Appliance With Automatic Send Mode Activation*, was duly and lawfully issued August 21, 2012. NXP is the sole owner of all rights, title and interest in the ’503 patent. A true and correct copy of the ’503 patent is attached as Exhibit 5.

15. United States Patent No. 6,434,654 (“the ’654 patent”), titled *System Bus With A Variable Width Selectivity Configurable At Initialization*, was duly and lawfully issued August 13, 2002. NXP is the sole owner of all rights, title and interest in the ’654 patent. A true and correct copy of the ’654 patent is attached as Exhibit 6.

COUNT I

(Infringement of the ’882 Patent)

16. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above as if fully set forth herein.

17. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the ’882 patent by making, using, selling, and/or offering to sell in the United States, or importing

1 into the United States, without authority, products or processes that practice the inventions
2 claimed in the '882 patent, including without limitation, Nintendo's Wii U.

3 18. Upon information and belief, Nintendo has induced the infringement and/or
4 contributed to the infringement of the '882 patent by knowingly and with intent, actively
5 encouraging customers to use Nintendo's infringing products, including without limitation,
6 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
7 '882 patent.

8 19. Upon information and belief, Nintendo intends to continue its unlawful
9 infringing activity related to the '882 patent.

10 20. Nintendo's acts of infringement have caused damage to NXP, and NXP is
11 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
12 wrongful acts in an amount subject to proof at trial.

13 **COUNT II**

14 **(Infringement of the '716 Patent)**

15 21. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
16 as if fully set forth herein.

17 22. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and
18 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe
19 the '716 patent by making, using, selling, and/or offering to sell in the United States, or importing
20 into the United States, without authority, products or processes that practice the inventions
21 claimed in the '716 patent, including without limitation, Nintendo's Wii U.

22 23. Upon information and belief, Nintendo has induced the infringement and/or
23 contributed to the infringement of the '716 patent by knowingly and with intent, actively
24 encouraging customers to use Nintendo's infringing products, including without limitation,
25 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
26 '716 patent.

25. Nintendo's acts of infringement have caused damage to NXP, and NXP is entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's wrongful acts in an amount subject to proof at trial.

(Infringement of the '432 Patent)

26. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
as if fully set forth herein.

27. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the '432 patent by making, using, selling, and/or offering to sell in the United States, or importing into the United States, without authority, products or processes that practice the inventions claimed in the '432 patent, including without limitation, Nintendo's Wii U.

28. Upon information and belief, Nintendo has induced the infringement and/or contributed to the infringement of the '432 patent by knowingly and with intent, actively encouraging customers to use Nintendo's infringing products, including without limitation, Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the '432 patent.

29. Upon information and belief, Nintendo intends to continue its unlawful
infringing activity related to the '432 patent.

2 30. Nintendo's acts of infringement have caused damage to NXP, and NXP is
3 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
4 wrongful acts in an amount subject to proof at trial.

COUNT IV

(Infringement of the '316 Patent)

31. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above as if fully set forth herein.

32. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the '316 patent by making, using, selling, and/or offering to sell in the United States, or importing into the United States, without authority, products or processes that practice the inventions claimed in the '316 patent, including without limitation, Nintendo's Wii U.

33. Upon information and belief, Nintendo has induced the infringement and/or contributed to the infringement of the '316 patent by knowingly and with intent, actively encouraging customers to use Nintendo's infringing products, including without limitation, Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the '316 patent.

34. Upon information and belief, Nintendo intends to continue its unlawful infringing activity related to the '316 patent.

35. Nintendo's acts of infringement have caused damage to NXP, and NXP is entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's wrongful acts in an amount subject to proof at trial.

COUNT V

(Infringement of the '503 Patent)

36. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above as if fully set forth herein.

37. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and has been directly infringing, contributing to the infringement of, and/or inducing others to infringe the '503 patent by making, using, selling, and/or offering to sell in the United States, or importing

1 into the United States, without authority, products or processes that practice the inventions
2 claimed in the '503 patent, including without limitation, Nintendo's Wii U.

3 38. Upon information and belief, Nintendo has induced the infringement and/or
4 contributed to the infringement of the '503 patent by knowingly and with intent, actively
5 encouraging customers to use Nintendo's infringing products, including without limitation,
6 Nintendo's Wii U, in a manner that constitutes direct infringement of one or more claims of the
7 '503 patent.

8 39. Upon information and belief, Nintendo intends to continue its unlawful
9 infringing activity related to the '503 patent.

10 40. Nintendo's acts of infringement have caused damage to NXP, and NXP is
11 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
12 wrongful acts in an amount subject to proof at trial.

13 **COUNT VI**

14 **(Infringement of the '654 Patent)**

15 41. NXP incorporates by reference the allegations of Paragraphs 1 through 9 above
16 as if fully set forth herein.

17 42. Upon information and belief, in violation of 35 U.S.C. § 271, Nintendo is and
18 has been directly infringing, contributing to the infringement of, and/or inducing others to infringe
19 the '654 patent by making, using, selling, and/or offering to sell in the United States, or importing
20 into the United States, without authority, products or processes that practice the inventions
21 claimed in the '654 patent, including without limitation, Nintendo's Wii U, Wii, 3DS, DSi, DSi
22 XL, as well as Nintendo's SD and SDHC cards.

23 43. Upon information and belief, Nintendo has induced the infringement and/or
24 contributed to the infringement of the '654 patent by knowingly and with intent, actively
25 encouraging customers to use Nintendo's infringing products, including without limitation,
26 Nintendo's Wii U, Wii, 3DS, DSi, and DSi XL, as well as Nintendo's SD and SDHC cards in a
27 manner that constitutes direct infringement of one or more claims of the '654 patent.
28

1 44. Nintendo had prior notice and knowledge of the '654 patent. Upon information
2 and belief, Nintendo lacks any justifiable belief that there is no infringement or that the infringed
3 claims are invalid. Nintendo has had specific knowledge of the '654 patent, as well as
4 documentation of its infringement since December 2012. Nintendo has therefore acted with
5 objective recklessness in its infringing activity, making Nintendo's infringement of the '654
6 patent willful. As a result, NXP is entitled to an award of exemplary damages, attorneys' fees,
7 and costs in bringing this action.

8 45. Upon information and belief, Nintendo intends to continue its unlawful
9 infringing activity related to the '654 patent.

10 46. Nintendo's acts of infringement have caused damage to NXP, and NXP is
11 entitled to recover from Nintendo the damages sustained by NXP as a result of Nintendo's
12 wrongful acts in an amount subject to proof at trial.

13 **DAMAGES**

14 47. As a result of Nintendo's acts of infringement, NXP has suffered and will suffer
15 actual and consequential damages; however, NXP does not yet know the full extent of such
16 infringement and such extent cannot be ascertained except through discovery and special
17 accounting. To the fullest extent permitted by law, NXP seeks recovery of damages at least for
18 lost profits, reasonable royalties, and other benefits received by Nintendo as a result of using the
19 misappropriated technology. NXP seeks any other damages to which it would be entitled in law
20 or in equity.

21 48. Upon information and belief, Nintendo has willfully infringed at least the '654
22 patent, which it has had knowledge of since at least July 2012. As a result, NXP seeks an award
23 of exemplary damages, attorneys' fees, and costs in bringing this action.

24 **DEMAND FOR JURY TRIAL**

25 49. NXP respectfully demands a trial by jury pursuant to Rule 38 of the Federal
26 Rules of Civil Procedure.

PRAYER FOR RELIEF

50. WHEREFORE, Plaintiff NXP respectfully prays for judgment against the Defendant for the following:

- A. Patent infringement;
- B. Actual economic damages;
- C. Exemplary treble damages as allowed by law;
- D. Injunctive relief as allowed by law;
- E. Attorneys' fees;
- F. Pre-judgment interest as allowed by law;
- G. Costs of suit; and
- H. All other relief in law or in equity to which Plaintiff may show itself justly entitled.

DATED: March 18, 2013

WATSON ROUNDS

By: /s/ Denise M. De Mory

Denise M. De Mory, (CA Bar No. 168076)

(will comply with LR IA 10-2 within seven days)

Cliff Win, Jr., (CA Bar No. 270517)

(will comply with LR IA 10-2 within seven days)

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